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No. 85-482 (6)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

THE FIRESTONE TIRE & RUBBER COMPANY,
Petitioner,

v.

THELMA COUSINEAU, PERSONAL REPRESENTATIVE OF THE ESTATE OF MARK COUSINEAU,
Respondent.

BEST AVAILABLE COPY

RESPONDENT'S OBJECTION TO THE NATIONAL ASSOCIATION OF MANUFACTURERS' MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

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On October 21, 1985, the National Association of Manufacturers (NAM) filed a Motion with this Court for leave to file a brief as amicus curiae in this case. Respondent's bases for objection are enumerated below.

First, the Michigan Court of Appeals did not rule, as NAM suggests in its Motion, that "First Amendment conduct could constitute concerted action on which tort liability could be based." NAM Motion at 2; *see* Appendix B of Respondent's Brief at 25a, *Cousineau* v *Ford Motor Co.*, 140 Mich. App. 19, 363 N.W.2d 721 (1985); Respondent's Brief at 14. As Respondent discussed in its Brief in Opposition, the Michigan Court of Appeals simply followed this Court's earlier decisions when it considered evidence of and surrounding the joint petitioning activity in determining whether summary judgment should be granted. Respondent's Brief at 14-17. Since the Michigan Court of Appeals decision does not in any way infringe on the rights of business entities to

jointly petition the government, the First Amendment rights of NAM's members cannot possibly be affected by the Michigan Court of Appeals decision. Therefore, NAM has no interest in this case.

Second, the issues and facts presented are unique to this case. The Michigan Court of Appeals made its determination to reverse the summary judgment on the concert of action claim based on specific documents. The Michigan Court of Appeals did not lay down any broad rule of law affecting the members of NAM. The Court simply reversed a summary judgment based on the specific, unique facts of this case. Therefore, NAM has no interest in this case and its motion should be denied.

Third, the documents in this case have been under a protective court order. There is no way that NAM can even speculate as to the specific content of those documents. Without being aware of all the facts in this case, NAM cannot propose any cogent position.

Finally, Supreme Court Rule 36.3 requires that an applicant for filing an amicus curiae brief must "set forth facts or questi ns of law that have not been, or reasons for believing that they will not adequat ly be, presented by the parties, and their relevancy to the case." NAM has failed to comply with this rule. In its Motion and Brief, NAM states that it is "uniquely qualified" to explain the ramifications of the Michigan Court of Appeals decision, yet never explains why it would be more qualified to explain than the actual parties. Clearly, NAM does not meet the requirements of Supreme Court Rule 36.

For all of the foregoing reasons, Respondent respectfully requests this Court to deny NAM's Motion for Leave to File Brief as Amicus Curiae in this case.

RESPECTFULLY SUBMITTED,

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Dated: October 29, 1985